

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Atty. Ref.: **4662-34**

**BAKKER et al**

Conf. No.: **6108**

Serial No. **10/541,062**

Group: **3749**

Filed: **June 29, 2005**

Examiner: **Ndubizu, Chuka Clement**

For: **PROCESS FOR THE EXTRACTION OF ENERGY FROM FLUE GAS**

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September 3, 2008

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

The following comments are intended to be fully responsive to the Official Action dated August 20, 2008, which set a nominal response due date of September 20, 2008.

**I. Request to Clarify Record**

The Official Action states that claims 1-11 are pending and that claim 2 has been withdrawn from consideration. According to the applicants' records, however, claim 2 was in fact *cancelled* by way of the Amendment dated May 15, 2008, thereby leaving claims 1 and 3-11 pending herein for consideration. Therefore, it is requested that the Official Record be corrected to reflect the correct current status of the pending claims herein.

## **II. Response to and Traversal of Restriction Requirement**

Applicants hereby elect for further prosecution the invention defined by Group I, including claims 1, 3-6 and 10-11.<sup>1</sup> This election is made, however, with traverse.

Specifically, applicants note that the Examiner has alleged that restriction for examination is now proper because the inventions of Groups I and II are independent or distinct and a serious search and examination burden would be presented if restriction were not required.

While applicants acknowledge that the inventions may in fact be patentably distinct one from another, applicants nonetheless suggest that no serious burden of search and/or examination exists in this particular instance. This reasoning is based on the fact that:

- (1) the independent process claim 1 on the one hand and the independent apparatus claim 7 on the other hand recite similar limitations that would render such claims properly examined in this single application – that is, a rejection against one claim would necessarily be applicable to the other due to such similar limitations; and/or
- (2) the Examiner has already examined on the merits both Groups of patentably indistinct claims based on an electronic search of classes 431 and 544 to which Groups I and II purportedly belong.

As to (1) above, applicants note that the following limitation comparison can be made between claim 1 of Group I and claim 7 of Group II, respectively:

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<sup>1</sup> The Official Action states that Group I includes claims 1-6 and 10-11. However, as noted above, claim 2 had previously been cancelled with the Amendment dated May 15, 2008, so that Group I claims are properly constituted at this stage of prosecution by claims 1, 3-6 and 10-11.

<u>Independent Claim 1</u>	<u>Independent Claim 7</u>
Process for the production of melamine using a furnace that is operated with a fuel resulting in flue gases	Apparatus for the production of melamine comprising a salt furnace operated by combustion and producing flue gases
A first heat exchange step in which the flue gases are heat exchanged with a first process stream	A first heat exchange unit in which salt is heated so as to provide heated salt which serves as a process heat supply in a process for the production of melamine
A second heat exchange step after the first heat exchange step wherein the flue gases are heat exchanged with a second process stream	A second heat exchange unit which directly or indirectly heats a process stream
A third heat exchange step wherein the flue gases are heat exchanged with fresh air	A third heat exchange unit which is in contact with the flue gases

Therefore, it can be seen from the chart above that the limitations present in independent claims 1 and 7 are sufficiently similar to one another so that an examination of both claims on the merits would not be unduly burdensome.

As to (2) above, applicants note that an action on the merits on *all* then pending claims – i.e., the claims of both Groups I and II -- was previously issued by the Examiner on February 26, 2008. Prior to issuance of the February 26, 2008 Official Action, the Examiner conducted key word searches on February 13, 2008 and February 15, 2008 in both classes 544 and 431 as evidenced by the Examiner's EAST Search History attached hereto as Exhibit A.

Therefore, a search strategy that was coextensive with class 431, subclass 115 and class 544, subclass 201 – which classes and subclasses are now being asserted establish independent art recognition of the Group I and Group II claims, respectively – has *already been conducted* by the Examiner. And as noted above, based on such

coextensive search strategy, the Examiner has already acted on the merits of *all* pending claims. To assert at this stage in the prosecution that such a coextensive search and continued examination of all claims would now present a serious burden has thus been factually rebutted by the Examiner's own actions to date. To be sure, the record indicates that no Patent Office economy of resources can now be achieved by requiring restriction as between claim Groups I and II.

Withdrawal of the restriction requirement advanced between the claims of Groups I and II is therefore in order. An action on the merits of pending claims 1 and 3-11 is therefore solicited.

### **3. Fee Authorization**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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